

II. Discussion²

Under § 3582(c)(1)(A)(i), before granting a sentence modification, a court must find: (A) extraordinary and compelling reasons warrant a sentence modification; (B) the defendant is not a danger to the safety of any other person or the community, and (C) the reduction is appropriate considering the sentencing factors located at 18 U.S.C. § 3553(a). *United States v. Hardin*, Case No. 1:19 CR 240, 2020 U.S. Dist. LEXIS 90855, at *5 (N.D. Ohio Apr. 7, 2020).

A. Extraordinary and Compelling Reasons

To determine whether extraordinary and compelling reasons for sentence modification exist, the Court considers whether: (1) the defendant is at high risk of having grave complications should he contract COVID-19, and (2) the prison where the defendant resides has a severe COVID-19 outbreak. *See Hardin*, 2020 U.S. Dist. LEXIS 90855, at *5-6; *see also United States v. Jones*, No. 20-3701, 2020 U.S. App. LEXIS 36620, at *19 (6th Cir. Nov. 20, 2020) (“district courts have full discretion in the interim to determine whether an “extraordinary and compelling” reason justifies compassionate release...”).

The Centers for Disease Control and Prevention (“CDC”) have determined that certain medical conditions unquestionably present an increased risk from COVID-19.³ Howell suffers from asthma, a medical condition that may pose an increased risk for severe illness from COVID-19. Therefore, the Court finds that Howell satisfies the first prong of the “extraordinary and compelling reasons” test.

² A defendant must satisfy § 3582(c)(1)(A)(i)’s exhaustion requirement before filing a motion for compassionate release. Howell has satisfied the exhaustion requirement.

³ People of Any Age with Underlying Medical Conditions, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Nov. 19, 2020).

Howell, however, fails the second prong of the “extraordinary and compelling reasons” tests. To date, 1 inmate and 3 staff are currently positive for COVID-19, and 7 inmates have since recovered at FCI Cumberland.⁴ The Court notes that it is not unsympathetic to Howell’s position. His fears regarding confinement are undoubtedly legitimate. However, the existence of a pandemic does not authorize the undersigned to usurp the BOP’s authority and empty prisons, especially where the facility has not been severely impacted by the outbreak. *See United States v. Brown*, No. 5:18 CR 111, Doc #: 48 at 3 (N.D. Ohio May 21, 2020).

B. Other Relevant Elements

Because Howell fails the “extraordinary and compelling reasons” test, the Court need not determine 1) whether he poses a danger to others should he be released or 2) whether reduction is appropriate considering the § 3553(a) sentencing factors, pursuant to 18 U.S.C. § 3142(g) and 18 U.S.C. § 3553(a). *See Hardin*, No. 1:19 CR 240. However, the Court notes that Defendant’s criminal history began when he was 18 years old, and he was given multiple chances on probation which were repeatedly violated, oftentimes in cases involving firearms.

III. Conclusion

For the above reasons, Howell’s Motion, **Doc ##: 46 and 56**, is **DENIED**.

IT IS SO ORDERED.

/s/ *Dan Aaron Polster* November 23, 2020
Dan Aaron Polster
United States District Judge

⁴ COVID-19 Coronavirus, Federal Bureau of Prisoners, <https://www.bop.gov/coronavirus/> (last visited Nov. 23, 2020). While the Court recognizes that there have been 20 positive tests COVID-19 at FCI Cumberland, 16 people has recovered as of November 23, 2020.